

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS**

FOR THE MINNESOTA DEPARTMENT OF ECONOMIC SECURITY

In the Matter of the Proposed
Withdrawal of Funds from West Central
Industries for Extended Employment
Program Services in Stearns County
Effective February 13, 1999.

**RECOMMENDATION ON CROSS-
MOTIONS FOR SUMMARY
DISPOSITION**

The above-entitled matter came before Administrative Law Judge Steve M. Mihalchick for argument on the parties' cross-motions for summary disposition at the Office of Administrative Hearings on September 8, 1999. The record on these motions closed at the end of the hearing.

Mary K. Martin, Attorney at Law, 2411 Francis Street, Saint Paul, Minnesota 55075, appeared on behalf of West Central Industries (WCI). Donald E. Notvik, Assistant Attorney General, 525 Park Street, Suite 200, Saint Paul, Minnesota 55103-2106, appeared on behalf of the Minnesota Department of Economic Security (Department or DES).

Based upon the arguments and memoranda submitted by the parties, all of the filings in this case, and for the reasons set forth in the following Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that the Commissioner of Economic Security order that:

1. WCI's Motion for Summary Disposition be GRANTED regarding the withdrawal of funding from its FY 1999 contract for services attributed to workers in Saint Cloud and Sauk Centre.
2. The Department's Motion for Summary Disposition be GRANTED regarding the exclusion of FY 1999 services at WCI's Saint Cloud and Sauk Centre operations for calculation of funding for WCI's FY 2000 contract.

Dated: October 14th, 1999

STEVE M. MIHALCHICK
Administrative Law Judge

MEMORANDUM

Summary Disposition

Both parties have moved for summary disposition, maintaining that there are no issues of fact remaining for hearing. While there was some dispute as to the exact dollar amounts involved in the two issues raised on appeal, the parties agreed on the amounts after the hearing. Due to the complexity of the facts of this matter, the documents that each party introduced were accompanied by testimony to explain the impact of those documents and the workings of the program at issue. No credibility issues arose from that testimony and the parties did not disagree as to the veracity of any of the testimony.

This matter presents two distinct legal issues. The first issue is whether the Department properly withdrew money from WCI that was paid for work performed by clients in Fiscal Year (FY) 1999. The second issue is whether WCI can include the services provided at its Saint Cloud and Sauk Centre facilities, both of which were closed in February 1999, in its FY 2000 base allocation for its contract.

An Administrative Law Judge may recommend or grant summary disposition of a case where there is no genuine issue as to any material fact. Minn. R. 1400.5500 K. Summary disposition is the administrative equivalent of summary judgment in district court because summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law^[1]. The Office of Administrative Hearings has generally followed the summary judgment standards developed in the courts when considering motions for summary disposition in contested cases.^[2]

Factual Background

WCI is a provider of services under the Extended Employment Program (EEP), which provides funding for assisting persons with disabilities in maintaining employment. The Department provides EEP funding through contracts entered into with individual providers. The amount of each contract is based on the anticipated number of persons to be served in the area of the provider's service center, and the number of hours that those persons are expected to work. EEP funding consists of center-based employment, where persons served work at the provider's location, and community-based employment (including support services), where the persons obtain work with outside employers while receiving support from the provider.

Each contract to provide EEP services contains a contract amount, arrived at through the amount of hours worked by persons in the program for the prior year. For new programs, a different calculation is used.^[3] While payments are based on reported hours of work, the total payments for the year cannot exceed an established maximum. The payment terms under the FY 1999 contract between WCI and the Department state, in pertinent part:

1. Payments will be based on the number of hours of work reported to the STATE in accordance with the provisions of this contract, Minnesota Rules, Chapter 3300, and Minnesota Statutes 268A. Payments will be made according to the following hourly reimbursement rate for each subprogram, pursuant to Minnesota Rules, Chapter 3300:

* * *

2. Payments may be withheld if the CONTRACTOR fails to comply with the CONTRACTOR'S DUTIES identified in Clause I of this contract.^[4]

In Clause III of the contract, a further limitation states that: "CONTRACTOR shall not receive payment for work found by the STATE to be not in compliance or performed in violation of federal, state or local law, ordinance, rule or regulation."^[5] Clause V of the contract allows the State to cancel the contract and states: "In the event of such cancellation, CONTRACTOR shall be entitled to payment, determined on a pro rata basis for work or services satisfactorily performed."^[6]

Another provider, Opportunity Training Center (OTC), had provided EEP services in Saint Cloud, Sauk Centre, Brainerd, Wadena, and Detroit Lakes until 1997. In 1997, OTC ceased providing EEP services. The Department sought to contract with other providers to take over the locations where OTC had provided EEP services. Production Alternatives began providing services in Crow Wing County and Rising Phoenix began providing services in Wadena and Detroit Lakes.^[7] WCI expanded its program to include a location in Sauk Centre and a location in Saint Cloud. Goodwill/Easter Seals and Rise, Inc. began providing EEP services in Saint Cloud.^[8] The funding made available to Production Alternatives and WCI for the EEP services delivered in those areas was reallocated from the funding established for OTC.^[9] The remaining providers were limited in the funding provided by the Department to other program categories. The Saint Cloud and Sauk Centre facilities provided by WCI were considered separately from its existing operations.^[10]

On November 10, 1998, WCI announced that it would "discontinue its contract for services to persons with disabilities in the St. Cloud and Sauk Centre locations."^[11] After discussions with the Department, WCI agreed to continue providing services to February 12, 1999.^[12] On December 18, 1998, the Department notified WCI that funds would be withdrawn from WCI's FY 1999 allocation based upon the closure of the Saint Cloud and Sauk Centre operations. The amount of the withdrawal was \$129,727, or 41.67% of WCI's FY 1999 total contract amount for services to be provided in Saint Cloud and Sauk Centre.^[13]

The maximum amount allowed under the contract for FY 1999, if prorated to the length of time WCI performed its obligations under the contract, was \$173,677. The amount claimed by WCI, based on hours worked was \$175,703. WCI asserts that it should be paid the difference, \$2,026, since there is no basis for withholding that amount. The Department asserts that the proration language in the FY 1999 contract allows the withdrawal in the amount identified.

On February 12, 1999, the Department informed WCI that hours worked in the Saint Cloud and Sauk Centre locations would not be allowed as part of WCI's base amount for FY 2000.^[14] On March 10, 1999, WCI initiated a contested case appeal on the issues of the withdrawal and disallowance of hours worked.^[15]

Withdrawal of Funds for FY 1999

WCI maintains that it has performed services under its contract with the Department for which no payment has been received. The Department argues that the cancellation provisions justify the approach taken in resolving the rights and obligations of the parties. The Department relies upon the contract language that states that the state may cancel the contract and that, upon cancellation, "CONTRACTOR shall be entitled to payment, determined on a *pro rata* basis for work or services satisfactorily performed."^[16] The Department has not argued that WCI failed to provide services prior to February 12, 1999, or that those services did not comply with the FY 1999 contract.

The Department's argument that the cancellation language must apply to this situation is undercut by two facts. The first fact is that the contract does not specify the method for the *pro rata* reduction. The Department's approach to this language is to divide the total maximum payment amount by twelve and multiply the amount derived by the number of months that services were actually provided. But there is nothing in the contract, rules, or statutes that requires proration by time. Another interpretation of the same language is to require payment of the amount earned, rather than the total contract amount. Yet another interpretation is to estimate the total hours to be worked by persons in the program and pay the portion of the total contract amount that is proportionate to the actual number of hours worked by persons in the program. This lack of clarity in the language of the contract is an ambiguity that must be construed against the drafter of the contract, in this case the Department.

The second fact that precludes the Department from using the cancellation clause is that, by its terms, it only applies when the Department cancels the contract. In this matter, WCI announced it was ceasing operations. The Department did not cancel the contract.^[17] With the cessation of operations, WCI no longer has any right to claim further payments for hours not already worked. But that is the limit of the adverse consequences for WCI under the contract.^[18] WCI is entitled to payment for the hours actually worked by persons served in the EEP program at the Saint Cloud and Sauk Centre locations in FY 1999.^[19]

Application of Reported Hours to Funding Base for FY 2000

WCI seeks to establish its funding base for FY 2000 by including the hours worked by persons served in the Saint Cloud and Sauk Centre facilities. The Department has refused to include those hours in calculating the funding base since those two program locations have not been served by WCI since February, 1999. WCI asserts that there are no geographic factors in the prior rules on funding and those rules are the appropriate rules to apply since the original contract was entered into in 1996. To do otherwise, WCI asserts, is to give retroactive effect to Minn. Rule 3300.2035.

Minn. Rule 3300.2035 was adopted in 1998.^[20] The provisions of the rule apply to subsequent allocations of funding for EEP services. Nothing in the prior annual contracts extends any rights beyond the year of the contract. Contracts for FY 1999 are subject to specific adjustment by operation of Minn. Rule 3300.2035, subp. 4.A.(1). There is no retroactive effect to Minn. Rule 3300.2035.

The Department maintains that closure of facilities in Saint Cloud and Sauk Centre precludes WCI from offering "ongoing services" that should be included in its base allocation for FY 2000. The standards for allocating funds for EEP providers in each fiscal year are set out in Minn. Rule 3300.2035. Subpart 3 of that rule requires the Department to take into account the "populations or geographic distribution of services" to be addressed in the allocation of funds. Subpart 4 requires contracts to be entered into under the standards set out in items A to C of the subpart.

Item A determines the starting point for a provider's contract to be based on the amount of production reported under previous year's contract. Item C provides for redistribution where underproduction has occurred. Item C.(2) states:

Allocation from underproduction shall be redistributed to other providers on the basis of guidelines established by the department for that funding year. The guidelines shall consider unmet needs of target populations and the geographic distribution of center-based employment, community employment, and supported employment.

Here, WCI's closure of facilities in Saint Cloud and Sauk Centre means that there will be a 100% level of underproduction in those geographic areas and among those target populations by WCI in SFY 2000. It is not reasonable to attribute FY 1999 work hours from Saint Cloud and Sauk Centre to WCI for future performance because WCI will no longer be serving that geographic region or that target population.

WCI maintains that other programs were entitled to include their work hours after moving their program locations. The Department agreed that those other providers were entitled to include those work hours. The Department also noted that in those cases, the new location was serving the same persons.^[21] In this matter, WCI has not shown that the same persons are now being served at other locations operated by WCI. They have simply alleged that some of the clients may still seek services from WCI.

The Department must give effect to both items A and C in Minn. Rule 3300.2035, subp. 4. Considering unmet needs of the target populations, the allocation granted to WCI for FY 1999 for those locations is properly reallocated to providers in those geographic areas for the calculation of FY 2000 contract amounts. The reported work hours for FY 1999 from WCI's Saint Cloud and Sauk Centre locations are properly excluded when calculating WCI's FY 2000 allocation.

Conclusions

There are no genuine issues of material fact to be resolved in this appeal. WCI has demonstrated that it is entitled to payment for hours worked by persons served in its EEP program facilities. The Department has demonstrated no authorization under statute, rule, or its contract to withhold money from WCI under these circumstances. Summary disposition in favor of WCI is appropriate on this issue. The Department has demonstrated that application of Minn. Rule 3300.2035, subp. 4, precludes inclusion of hours worked at the closed program facilities in the base allocation for the following fiscal year. Summary disposition in favor of the Department on this issue is appropriate.

S.M.M.

^[1] **Sauter v. Sauter**, 70 N.W. 2d 351, 353 (Minn. 1955); **Louwagie v. Witco Chemical Corp.**, 378 N.W.2d 63,66 (Minn. App. 1985); Minn. R. Civ.P. 56.03.

^[2] See Minn. R. 1400.6600

^[3] The calculation for new or expanded programs accounts for the lack of history in hours worked by persons served by the provider.

^[4] DES Exhibit 3, at 3-4.

^[5] *Id.* at 4.

^[6] *Id.*

^[7] DES Exhibit 5.

^[8] *Id.*

^[9] *Id.* at 2.

^[10] DEX Exhibit 4.

^[11] DES Exhibit 6.

^[12] DES Exhibit 11.

^[13] DES Exhibit 14.

^[14] DES Exhibit 11.

^[15] WCI Exhibit D.

^[16] DES Exhibit 3, at 4.

^[17] The FY 1998 contract form, Ex. 2, contained a provision that allowed for cancellation by a contractor and required the contractor to propose terms for winding up. That provision is absent from the 1999 contract.

^[18] The Department has not asserted that the services provided did not meet the requirements of the contract. So long as WCI properly reported the hours of work performed there is no basis for withholding payment.

^[19] WCI also asserted that the Department did not follow its own rules on withdrawal of funds. In this matter, the provider ceased to provide services and the Department is not obligated to follow any particular process other than to pay for the services that were provided in accordance with the contract.

^[20] The Order adopting the rule was published at 22 *State Register* 2294 on June 22, 1998.

^[21] DES 11, at 4.